

SENATE BILL REPORT

SB 5353

As Reported By Senate Committee On:
Judiciary, February 23, 2007

Title: An act relating to courts of limited jurisdiction.

Brief Description: Changing provisions concerning municipal courts.

Sponsors: Senators Kline, McCaslin, Swecker and Pridemore.

Brief History:

Committee Activity: Judiciary: 1/19/07, 2/23/07 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5353 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; Hargrove, Murray and Weinstein.

Minority Report: Do not pass.

Signed by Senator Carrell.

Minority Report: That it be referred without recommendation.

Signed by Senator Roach.

Staff: Dawn Noel (786-7472)

Background: Counties and cities have jurisdiction of the prosecution, adjudication, sentencing, and incarceration of adult misdemeanor offenses referred to their courts by their law enforcement agencies. Municipal and district courts also have jurisdiction over matters, including various protection orders, for which they are not expressly required to exercise their jurisdiction. No law expressly authorizes a city that is not operating its own municipal court to enter into an agreement with another city for court operations. An issue also exists as to whether such a joint court is an authorized venue for matters arising out of ordinances adopted in a city in which the court is not located.

Currently a municipal court judge must be elected where the judge is compensated for more than 35 hours a week. It is discretionary with city councils, in cities where the judge works fewer hours, whether the position is filled by election or appointment. In a substantial majority of cities with independent municipal courts, the judge is appointed to a four-year term of office. Concern exists that when a municipal court judge is subject to initial appointment and reappointment by the legislative and executive branches of the city, the potential for abuse

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exists. In some cities with appointed judges, the municipal court reports to the mayor, city manager, or city finance director.

Summary of Bill: A city is authorized to contract with another jurisdiction for the delivery of municipal court services. A "host" jurisdiction is one to which a contracting city pays money for judicial services. The host may be the county in which the contracting city is located, or it may be another city. A host jurisdiction and any contracting cities must be in reasonable proximity to one another. A host city or county is given exclusive original jurisdiction over cases filed by the contracting city. Traffic infractions and the issuance and enforcement of certain protective orders are added to the list of judicial matters for which a county or city is expressly responsible. The mayor of each city or town, within 30 days after the effective date of the ordinance creating the municipal court, is directed to appoint a municipal judge or judges to serve until January 1st of the year following the next election when other city elected positions are normally elected. The legislative authority of a city or town is empowered to confirm the appointment. A person appointed as a municipal judge must be a citizen of the United States, a resident of the state of Washington, and an attorney admitted to practice law before the courts of the state of Washington.

The legislative authority of a city or town must, by ordinance, provide for the number of full and part-time judges to be elected. The elections will be held at the same time as elections for other elected city offices. In those cities and towns with more than one full or part-time judge position, the county auditor or election official in which the majority of city or town residents reside is directed to designate each office of a municipal court judge to be filled by a number. At the time of filing the declaration of candidacy, each candidate must designate which one of the numbered offices for which he or she is a candidate. If a void or lapse of election occurs in a city or town with a population of less than 10,000, the mayor is directed to appoint a qualified person to serve the term of office for the position for which the void in election or lapse of election occurred. The legislative authority of a city or town is empowered to confirm the appointment.

Eligibility to file a declaration of candidacy to serve as a municipal court judge requires the person to be a citizen of the United States and a resident of Washington and either a lawyer admitted to practice in Washington State or, in cities or towns having a population of less than 5,000, a person who has taken and passed, by January 1, 2003, the qualifying examination for a lay candidate for judicial officer.

The terms of municipal court judges serving on July 1, 2006, and those municipal court judges who are appointed to terms commencing prior to January 1, 2010, will expire January 1, 2010. Terms of their successors will begin on January 1, 2010, and on January 1st of every fourth year after.

In cities or towns where a court commissioner has not been appointed and a part-time judge presides over the municipal court, he or she need not be a resident of the city or county in which the municipal court is created. Court commissioners may be appointed by a municipal court judge. A commissioner authorized to hear or dispose of cases must be a lawyer admitted to practice law in Washington or a non-lawyer who has passed the qualifying examination for lay judges for courts of limited jurisdiction by January 1, 2003.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED

COMMITTEE (Judiciary): It is recognized that the authority of cities to contract with counties and other cities for judicial services is pre-existing. Cities are required to have jurisdiction over the issuance of anti-harassment protection orders. Cities are also required to appoint their part-time judges utilizing a standardized appointment procedure. This procedure involves creation by ordinance of a judicial nominating commission, which is to consist of various attorneys, local officials, citizens, and staff. The commission evaluates applicants based on various criteria, and submits a ranked list of applicants for the mayor or appointing authority to select, subject to confirmation by the local city council or legislative body. Once appointed, the judge serves for two years before having to participate in an uncontested retention election. To remain in office, the judge must garner more than 50 percent of the vote which answers "yes" to the question of whether the judge should remain in office for four years.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2007.

Staff Summary of Public Testimony: PRO: All judicial officers should be elected. The issue is not how a municipal court judge is initially selected, but how that judge is retained. The judge may feel pressured to decide cases in certain ways if his or her retention is left in the hands of the local executive and legislative branches. This issue implicates separation of powers. No practical reason exists to not elect judges. The costs associated with a judicial campaign are commensurate with the size of the town. If no one files for candidacy, the judge could be appointed for the full four-year term. It is important to mandate municipal court jurisdiction over protection orders so that the most vulnerable citizens will have protection. Many small cities are not taking advantage of the opportunity to issue protection orders. It is important for citizens seeking protection to be able to access a forum that is not half a county away. A domestic violence victim could be left with no funds, yet must take care of young children; accessibility is important.

CON: Requiring election of all municipal court judges would result in some courts going out of business. The pool of willing and eligible candidates would be minimized. People running for these positions wouldn't want to go through the burdens associated with the election process, such as filing financial statements. Under these circumstances, a judge having no experience could file for candidacy at the last minute and win without opposition. The municipal judges we have now are honest, hard-working judges with decades of experience. The system we have works the way it is now; the proposed fix would be worse. Requiring mandatory jurisdiction over protective orders is the equivalent of an unfunded mandate. There are many small courts in this state; some are in session two days per month, yet are run in an efficient manner that safeguards everyone's rights. If a part-time judge must be available everyday to issue protective orders, this would result in tremendous costs to that judge's city. The city would have to re-negotiate compensation with the judge. Cities would lose many judges who must schedule their judicial service around private practice. These judges are not

in service to make money; they are there for the good of the community. If this bill is passed, a number of judges would not run.

OTHER: The contracting provisions of the bill clarify the pre-existing contracting authority of cities. The provisions also allow for efficiency by improved access of court services, while keeping costs down for citizens. However, expanding municipal court jurisdiction to include protection orders would be an unfunded mandate. Also, under this bill, it would be possible for a municipal court to issue an order that conflicts with an order issued by a superior court, for example. Requiring election for municipal judges compromises judicial independence because candidates are obligated to make campaign promises. Also, citizens, and even lawyers, often aren't familiar with judicial candidates, and therefore don't know who to vote for. Smaller jurisdictions would have difficulty finding good judicial candidates. The key to promoting judicial independence is to create standards for the selection and appointment of judges. It is possible to improve access to justice without burdensome election requirements. The federal system of judicial appointment works.

The provision requiring mandatory municipal jurisdiction over anti-harassment and protective orders seems to only apply to contracting courts. It also seems that those courts with limited hours need only hear cases concerning protective orders and the like when open. Filing fees associated with civil anti-harassment orders could be a potential source of revenue for local courts. Election of judges is important. Requiring election would not prevent good qualified judicial candidates from seeking office. We should be hesitant with any change that would create an additional layer of courts; we already have reliable regional court system, the district court system. We should address problems within the system rather than creating an additional layer. For instance, the master plan for the King County District Court essentially states that it will come to the municipalities, and be the preferred court of limited jurisdiction. Also, we would like to see a phase-out of eligibility for lay candidates for judicial positions.

Persons Testifying: PRO: Senator Kline, prime sponsor; Judge Marilyn Paja, District and Municipal Court Judges Association, Board for Judicial Administration; Jeff Hall, Board for Judicial Administration; Dave Johnson, Washington Coalition of Crime Victim Advocates.

CON: Judge Paul Conroy, Aberdeen Municipal Court.

OTHER: Mary Alyce Burleigh, City of Kirkland Council, Association of Washington Cities; Mike Doubleday, Cities of Bellevue and Newcastle; Doug Levy, Cities of Everett, Kent, Federal Way, Renton, and Puyallup; John Wise, Mayor of Enumclaw; Judge Barbara Linde, King County District Court.